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Attorney for the Commission Staff

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF )	
IDAHO POWER COMPANY FOR APPROVAL )	CASE NO. IPC-E-13-23
OF A SPECIAL CONTRACT WITH J.R. )	
SIMPLOT COMPANY. )	COMMENTS OF THE
)	COMMISSION STAFF
)	

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**COMES NOW** the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Kristine A. Sasser, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 32984 on February 25, 2014, in Case No. IPC-E-13-23, submits the following comments.

### BACKGROUND

Idaho Power filed an Application with the Commission on December 4, 2013, requesting that the Commission issue an Order approving special contract terms for electric service between Idaho Power and J.R. Simplot Company's new Caldwell facility. Simplot filed an answer on February 5, 2014, disputing Idaho Power's contract language and initial rates. Simplot requested that the Commission include Simplot's suggested clauses in the contract and that the Commission accept a different average rate.

A special contract is required when electric loads at a single premises exceed 20 MW. Simplot plans to consolidate some of its potato processing operations. The consolidation plan

consists of closing three plants in Nampa, Aberdeen and Caldwell and opening a single larger facility in Caldwell. The three plants to be closed are Idaho Power Rate Schedule 19 customers with individual loads less than 20 MW. The load at the new plant would exceed 20 MW.

Idaho Power states, in spring 2013, a Simplot representative contacted Idaho Power requesting that the Company enter into negotiations for a special contract for Simplot's Caldwell plant. In response, Idaho Power drafted a special contract and the parties entered into negotiations regarding the specific terms.

Idaho Power maintains that the Company and Simplot have reached agreement "as to nearly all of the terms and conditions of the contract, but have reached an impasse on certain provisions regarding limitations on liability." Application at 1.

Idaho Power requests that the Commission approve terms regarding the bilateral waiver of indirect, special and consequential damages. Application, Attachment 1, Section 11.2. The Company also asks the Commission to approve its proffered terms regarding limitations on direct damages. *Id.*, Section 11.3.

Should the Commission determine that it is "prudent for the Company to assume the risk for unlimited direct damages and consequential damages associated with Simplot's business, Idaho Power requests an opportunity to re-examine the terms of the special contract, including, but not limited to, an appropriate cost-of-service, that appropriately reflect this assumption of risk." Application at 8.

Simplot argues that Idaho Power's request for limited and waived liability is a violation of "the well-settled Idaho legal authority prohibiting the inclusion of such language in a utility's tariff." Answer at 2. Simplot maintains that Idaho Power's proffered clauses contradict the Idaho Supreme Court's rulings that exculpatory clauses used by a public utility are unenforceable.

Simplot also disputes Idaho Power's calculation of the rates included in the filing. Simplot states that "the cost of service study used to set Simplot's rate is vintage 2010 and is out dated [sic]." *Id.* at 12.

## **STAFF ANALYSIS**

Having reviewed the positions of Idaho Power Company and Simplot regarding the limitation of liability, Staff believes that both sides of the issue have been adequately presented. There is merit to each position. Special contract customers negotiate terms with Idaho Power for electric service which puts them in a different position than a customer receiving service under a

tariff. Therefore, a determination regarding limitations on liability is a policy decision best left to the Commission.

Staff has reviewed the positions of the two parties with regard to the average rate Simplot should pay under the new contract. The average rate for the contract is revenue requirement per kWh. The actual rates that Simplot will pay are broken down into energy and various demand components.

It is Staff's understanding that Idaho Power Company is proposing an average rate of 4.243 ¢/kWh.<sup>1</sup> The rate was determined by updating jurisdictional allocation and class cost of service information from Case No. IPC-E-11-08 (11-08 case). The jurisdictional allocation study was updated to include the Simplot Caldwell load and the cost of a transformer, and to exclude the three Schedule 19 loads that are expected to be lost. The class cost of service study added the Simplot Caldwell facility as a new special contract customer, in a class of its own, and removed the three Schedule 19 customer plants that are scheduled to close. Finally, outside of the normal cost of service process, the cost of service revenue requirement was updated to include the base rate impacts of Langley Gulch, OATT changes, depreciation changes, and changes that have occurred in the Boardman balancing account. These are all of the changes that have been made to base rates since the 11-08 case. The Idaho Power calculation method is intended to provide a cost of service based revenue requirement and rates for the new contract.

The J. R. Simplot Company is proposing an average rate of 4.197 ¢/kWh.<sup>2</sup> It is Staff's understanding that this rate was derived by modifying the Idaho Power methodology. Simplot's methodology is also intended to provide a full cost of service rate. ( See Simplot's response to Idaho Power Company's First Production Request, Question No. 2.) The annual revenue requirement difference between the rates that Idaho Power Company proposes and the rates Simplot proposes is approximately \$97,000.

Staff proposes a different approach from those proposed by the other two parties. Staff proposes that the average rate for the Simplot Caldwell special contract be established using the simple average of the three existing special contract rates, which is 3.795 ¢/kWh.<sup>3</sup> Assuming the

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<sup>1</sup> Idaho Power's proposed rate of 4.243 ¢/kWh is based on a revenue requirement of \$8,948,117 divided by Simplot's expected annual energy usage of 210,890,146 kWh.

<sup>2</sup> Simplot's proposed rate of 4.197 ¢/kWh is based on a revenue requirement of \$8,851,662 divided by Simplot's expected annual energy usage of 210,890,146 kWh.

<sup>3</sup> Staff's proposed rate of 3.795 ¢/kWh is the average of the Micron rate, 4.105 ¢/kWh, the Simplot Pocatello rate, 3.570 ¢/kWh, and the DOE rate of 3.711 ¢/kWh. These are the average rates established in Case No. IPC-E-12-14, the Langley Gulch Case.

level of sales used by Simplot and Idaho Power, this average rate would produce annual revenue of \$8,003,281 ( $.03795 \text{ \$/kWh} \times 210,890,146 \text{ kWh} = \$8,003,281$ ). Both energy sales and revenue from Simplot's new Caldwell plant are expected to exceed the amounts from the three Schedule 19 facilities to be closed. Staff proposes its rate for two reasons. First, the three special contract rates are rates currently approved by the Commission for similarly situated customers, and second, the cost of service results presented in this case are not credible.


It is commonly recognized that the mathematical calculation of cost of service is not the only consideration when rates are established. Other political, economic or methodological considerations or concerns may impact ordered revenue requirements for individual customer classes. For these reasons the Commission has not established special contract customer rates at a full cost of service level in recent cases. Some of these cases have been settled. In those cases the Commission accepted the rate spread presented in the settlement that did not reflect a move to full cost of service. In all cases, including the settled cases, the Commission's decisions, including the rate spread decisions, have been deemed "fair and reasonable." It is Staff's view that it is also fair and reasonable that a similarly situated customer should receive similar rates for similar reasons. Staff believes that the average of the three existing special contract rates is the most appropriate way to establish the initial Simplot Caldwell contract average rate and revenue requirement.

The Staff believes that a cost of service based rate is not appropriate for the Simplot Caldwell facility for several reasons. First, a cost of service study requires accounting data, energy and demand data by customer class, and a method for doing the calculations. The cost of service calculations presented in this case are based on data and methodology from Case No. IPC-E-11-08 with very few updates. The accounting data was updated to include a new transformer. The usage characteristics were updated to reflect the three Schedule 19 facilities to be closed and to include the new Simplot Caldwell special contract customer. This results in nearly all of the accounting data and customer class allocation data staying at 2011 levels. This data is outdated and inappropriate for establishing current class cost of service. Second, the methodology filed by Idaho Power Company in the 11-08 case was never accepted by the Commission for the purpose of establishing class rates. In general, the accounting data is not current, the class usage characteristics used to develop demand and energy allocators has not been updated and the methodology has not been approved. Staff believes that Simplot's initial rates should not be based on Company proposed "cost of service" when the proposed cost of service methodology has not been fully vetted nor approved by the Commission.

## RECOMMENDATIONS

Staff recommends that the average of the existing rates currently being paid by Idaho Power's three special contract customers be established as the initial average rate for the new Simplot Caldwell special contract. Staff calculates this rate to be 3.795 ¢/kWh. The associated annual revenue requirement is \$8,003,281. Staff further recommends that Idaho Power Company be directed to submit rates designed to produce this revenue requirement and that the rates be effective upon Commission approval.

Respectfully submitted this 28<sup>TH</sup> day of March 2014.

  
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Kristine A. Sasser  
Deputy Attorney General

Technical Staff: Keith Hessing

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 27TH DAY OF FEBRUARY 2014, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-13-23, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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